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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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08/796,305

02/07/1997

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CULTOR-102US

8781

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05/27/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 05/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
08/796,305

Applicant(s)

Kilibwa

Examiner

Lien Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan. 31, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-39, 41-56, and 58-71 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-35, 37-39, 41-43, 45-49, 51-56, 58, 59, 61-63, and 66-71 is/are rejected.
- 7) ☒ Claim(s) 36, 44, 50, 60, 64, and 65 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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1. The 102 and 103 rejections of claims 30,36,48,50, 37-38, 54-55 over the Dartey et al reference are hereby withdrawn.

2. Claims 30-35, 37-39, 41-43, 45-49, 51-56, 58-59, 61-63 and 66-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelbrecht et al in view of the textbook "The Encyclopedia of Chemical Technology" and Yanetani et al for the same reason set forth in paragraph 4 of the previous office action.

3. Claims 44,36⁵⁰ and 60 are free of prior art for the reason of record. Claims 64-65 are free of prior art because there is no disclosure in Engelbrecht et al for the baked product to be a muffin.

4. In the response filed Jan. 31, 2003, applicant argues Yanetani teaches away from the use of polydextrose in bakery foods such as bread because they disclose the addition of polydextrose causes reduced volume which result in tastelessness. This argument is not persuasive. The Yanetani reference was only relied upon to show that a discussion of soluble and insoluble fiber actually means water soluble or water insoluble. While Engelbrecht et al disclose soluble and insoluble fiber, they do not state water soluble and water insoluble; the Yanetani reference was used to show what the terms mean or actually indicate. Since Engelbrecht et al teach the fiber can be the water soluble or water insoluble type and the fiber can be polydextrose, a baked product containing water soluble polydextrose is fully encompassed in the Engelbrecht et al disclosure. The disclosure about adding polydextrose in baked product in Yanetani is not specific to any baked formulation; the taste of food product depends on many factors such as type

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of ingredients, the quality of ingredients, the amount of ingredients, the processing, the baking etc. Also, the taste varies from one to one; what is tasteless to one might not be tasteless to the other. Engelbrecht et al explicitly teach to add water soluble polydextrose to bread product and they do not disclose any adverse property with such addition. Yanetani do not contradict the teaching of Engelbrecht et al because Yanetani does not make any reference to any specific formulation of bread. Furthermore, Yanetani can not contradict the teaching of Engelbrecht et al when Engelbrecht et al clearly disclose the addition of polydextrose to the bread product. The Yanetani reference was not relied upon for the teaching of adding polydextrose to bread product. Applicant further argues the property of antistaling is not recognized in Engelbrecht because Engelbrecht could be referring to another form of polydextrose such as water insoluble polydextrose. While product containing water insoluble polydextrose is contemplated in Engelbrecht, a product containing water soluble polydextrose is also disclosed in Engelbrecht because they disclose the fiber can be water soluble, water insoluble and the fiber includes polydextrose. Applicant argues Engelbrecht et al use shortening as the antistaling additive. While shortening can have antistaling effect, it does not prevent the polydextrose from having antistaling effect. When polydextrose is used, it would give antistaling effect whether or not it is disclosed.

5. Applicant's arguments filed Jan. 31, 2003 have been fully considered but they are not persuasive.

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6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

May 23, 2003


LIEN TRAN
PRIMARY EXAMINER
Group 1700